Judge Davis

**David Emil Arnal**
**Appellant**

**vs**

**Laura Lawton Fraser**
**Appellee**

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Case Number: 03-40429

District Court Number:

11th Circuit Number:

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Appeal Filed: June 16, 2003

Transmitted:

Issues:

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District Court Ruling:

# In the United States Bankruptcy Court
# for the
# Southern District of Georgia
## Savannah Division

In the matter of:

DAVID EMIL ARNAL

*Debtor*

LAURA LAWTON FRASER

*Movant*

v.

DAVID EMIL ARNAL

*Respondent*

Chapter 13 Case

Number 03-40429

FILED
at 3 O'clock & 55 min P M
Date 6/10/03 cc
MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia

**MEMORANDUM AND ORDER**
**ON MOTION FOR RELIEF FROM STAY**

On February 6, 2003, David Emil Arnal ("Debtor") filed a petition for relief under Chapter 13 of the Bankruptcy Code. This case comes before the Court following Laura Lawton Fraser's ("Fraser") Motion to Modify Stay filed February 21, 2003. The hearing for this matter was held on April 17, 2003.

This Court has jurisdiction pursuant to 28 U.S.C. § 157 (a) and (b)(1) over

cc: Debtor Arnal
Debtor's Atty. Hinesley
~~Creditor~~
Creditor's Atty. Drake
Trustee Brown
~~U.S. Trustee~~
6/10/03 cc

AO 72A
(Rev.8/82)

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this core proceeding. Pursuant to Federal Rule of Bankruptcy Procedure 7052(a), I make the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT

Debtor and Fraser were divorced pursuant to an Amended Final Order filed October 17, 2001, in the Family Court for the Fourteenth Judicial Circuit, Beaufort, South Carolina ("Family Court"). Pursuant to the order, Debtor was ordered to pay as child support for one minor child of the parties, the sum of $1,564.00 per month, his pro-rata share of 64.4% of the uncovered medical expenses, as well as Fraser's attorney's fees in the amount of $75,000.00. Fraser alleges that Debtor has repeatedly failed to pay the amounts relating to their minor child. Thus, Fraser wishes to modify the stay in order to enforce her rights as set forth in the Amended Final Order and all other orders entered by the Family Court.

The parties have stipulated that at the time of the filing of the original petition, Debtor was in arrears for child support in the amount of $9,067.61 and for medical expenses of $3,057.56. Debtor scheduled as unsecured priority claims, Beaufort County Family Court for child support and Fraser for court ordered legal fees and uncovered medical expenses. Further, his plan proposes to pay the Trustee $200.00 for six months, then $663.00 monthly for 60 months. The Meeting of the Creditors was held on March 31, 2003, but his plan has yet to be confirmed.

Since the October 17 Amended Final Order, there have been six times where Fraser or the Family Court has caused Debtor to come back before the court to show cause why he should not be held in contempt for failure to make the agreed-upon payments. On February, 10, 2003, a full evidentiary hearing was held on the Supplemental Rule to Show Cause Order requiring Debtor to explain why he should not be held in contempt for violating court orders. The Family Court Judge is, however, awaiting the outcome of Fraser's motion in this matter before issuing his ruling.

Since the April 17 hearing on Fraser's motion for stay relief, Fraser has alleged that she sent Debtor a medical invoice in the amount of $456.00 via certified mail on April 4, 2003. Fraser charges that Debtor failed to pay such invoice within the allotted 14 days. In response to Fraser's charges, Debtor has stated that the unpaid medical invoice was mailed to an improper address. Further, Debtor alleges that all post-petition charges contained in the invoice have now been paid.

Debtor concedes that the filing of this case was motivated solely by the February 10 Family Court hearing and Debtor views this Court as a court of last resort in this instance as he claims to be stretched beyond his financial means. Since filing his case, Debtor has obtained new employment, but is still not completely certain about his financial situation. Debtor believes that if the Family Court is allowed to issue its order he will be

imprisoned which would likely cost him his job. Debtor has stated that he wants the Family Court to proceed in all regards except for the enforcement of the pre-petition support and insurance arrearages. In short, he wants this Court to grant him "breathing space" so that he can establish financial stability.

Debtor also questions the validity of the Family Court order establishing child support. He argues the Family Court found that, based on his education and receipt of a graduate degree from Harvard, he was capable of earning more money than he is actually earning at present.[1] Thus, Debtor argues that the court's order is "punitive." While that order has not been stayed, it is currently on appeal.

Fraser argues that the Eleventh Circuit's opinion in Carver v. Carver should be controlling. 954 F.2d 1573 (11th Cir. 1992). That is, this Court should grant her request for relief from stay based on the policy that relief from stay should be liberally granted in situations involving collection of alimony, maintenance or support in order to avoid entangling federal courts in family law matters best left to state courts. Fraser insists that the Bankruptcy Court should not become an unwitting accomplice in Debtor's "scheme" to avoid responsibility for his child support obligations imposed upon him by the Family Court. Fraser likewise charges that Debtor is attempting to use this Court as a "weapon" in their

[1]Debtor testified that the Family Court imputed to him annual income of about $150,000; however, his tax returns, that were at the Family Court's disposal, show that he has never earned that much.

ongoing domestic relations dispute and that the Family Court should have the authority to enforce its own order. Fraser cites Debtor's pattern of failure to comply with prior Family Court orders as further reason to grant a relief from stay in this situation.

## CONCLUSIONS OF LAW

In Carver the Eleventh Circuit Court of Appeals applied the "domestic relations exception" to federal jurisdiction in stating that a bankruptcy court should have abstained from hearing an action brought by a debtor against his former wife and her counsel for violation of the automatic stay of 11 U.S.C. § 362(a). Carver states that, "[w]hen requested, such relief should be liberally granted in situations involving alimony, maintenance, or support in order to avoid entangling the federal court in family law matters best left to state court." 954 F.2d at 1578. Relief is liberally granted out of concern that bankruptcy will be used as a weapon in an ongoing battle between former spouses. Further, it is essential that, "[t]he bankruptcy code ... not be used to deprive dependents, even if only temporarily, of the necessities of life." Carver, 954 F.2d at 1579 (*citing* Caswell v. Lang, 757 F.2d 608, 610 (4th Cir. 1985)).

Two courts have argued that the domestic relations exception to jurisdiction as articulated in Carver has since been limited to the issuance or modification of a divorce, alimony, or child custody decree by the holding in Ankenbrandt v. Richards, 504 U.S. 689,

112 S.Ct. 2206, 119 L.Ed.2d 468 (1992). *See* In re Fullwood, 171 B.R. 424, 427 (Bankr. S.D. Ga. 1994) (Walker, J.) (holding that the automatic stay would not be lifted to permit a Chapter 13 debtor's former wife to enforce, in state court, child support and attorney fee obligations that had already been reduced to judgment); Lackey v. Lackey (In re Lackey), 148 B.R. 626, 630 (Bankr. N.D. Ala. 1992) (holding that relief from stay would not be granted where child support arrearage was more than adequately provided for).

In Ankenbrandt, the Supreme Court held that a district court could hear an action brought by a mother on behalf of her children against their father alleging sexual abuse. The decision in Ankenbrandt by no means alters this Court's policy of not becoming intertwined in domestic relation matters such as the case at bar. Instead, I agree with the statement that, "Congress has recognized the importance of domestic relations obligations, implicitly mandating that bankruptcy courts proceed with caution in these matters. Carver is consistent with this Congressional policy and distinguishable from Ankenbrandt since Ankenbrandt does not involve bankruptcy." Rogers v. Overstreet (In re Rogers), 164 B.R. 382, 389 (Bankr. N.D. Ga. 1994).

This case is distinguishable from the facts of both Lackey and Fullwood. In Lackey, the debtor's plan had been confirmed over the creditor's objection prior to the creditor requesting relief rom stay to pursue collection of prepetition child support. Further,

the creditor did not appeal the order confirming the plan. As the court in Lackey stated, "a confirmed plan bind[s] the debtor and each creditor." 11 U.S.C. § 1327(a). Since the court found that the chapter 13 case adequately provided for the creditor's claim, creditors request for relief from stay was denied. Here, there has been no confirmation that binds Fraser and forecloses her request to modify the stay.

At the time of the hearing on the motion for stay relief in Fullwood, there was no arrearage for post-petition child support and debtor had scheduled all amounts owed for pre-petition support. Thus, the court found that it did not have to delve too deeply into family law matters to refuse to lift the stay. Here, Debtor has raised arguments that are more aptly dealt with in the Family Court. Debtor is clearly dissatisfied with the ruling handed down in state court and there are still issues related to the Amended Final Order that have not been resolved. He has repeatedly been cited to appear in South Carolina courts to show why he has failed to pay court ordered support. In this instance, there clearly is the danger that bankruptcy will be used as a weapon in an ongoing battle between former spouses. In addition, Fraser has alleged that Debtor has failed to pay certain post petition amounts. While Debtor has stated that his position is that he "remains current on his post petition obligations," determining which side is correct in this situation would definitely require this Court to delve into family law matters.

The weight of authority in this district indicates that Carver is still good law and has not been limited. *See* Beckett v. Beckett (In re Beckett), 1999 WL 33588546, *2 (Bankr. S.D. Ga. 1999) (Davis, J.) ("teaching of Carver is that bankruptcy courts should abstain in appropriate circumstances from relitigating issues that are the special province of the state courts in the area of domestic relations"); Elam v. State of Georgia (In re Elam), 1992 WL 12004376, *2 (Bankr. S.D. Ga. 1992) (Dalis, J.) (stay modified to extent necessary to allow state to enforce support judgment); Frechtman v. Frechtman (In re Frechtman), 1992 WL 12004440, *3 (Bankr. S.D. Ga. 1992) (Dalis, J.) (Chapter 11 case dismissed where "it is clear that a bankruptcy petition has been filed solely to thwart a state law proceeding by use of the automatic stay"). Also, the Eleventh Circuit has recently reiterated its approval of Carter. *See* Cummings v. Cummings, 244 F.3d 1263, 1267 (11th Cir. 2001) ("We previously have noted that '[i]t is appropriate for bankruptcy courts to avoid incursions into family law matters out of consideration of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters.'"). In addition, lower courts should be extremely careful before ruling that circuit court precedent is no longer good law. *See* Higgins v. Closeout Distribs., Inc. (In re Higgins), 159 B.R. 212, 215 (S.D. Ohio 1993). Thus, I hold that the policies of Carver are still controlling in this case.

This Court recognizes the holding of Mudd v. Jacobson (In re Jacobson).

231 B.R. 763 (Bankr. D. Ariz. 1999) (given code amendments making nondischargeable support obligations priority claims entitled to full payment, granting relief from stay in order to allow enforcement of those obligations in state court should be the exception rather than the rule). Jacobson is not binding on this court and, as discussed, the overwhelming precedent of the Southern District of Georgia is contrary to its holding

Debtor is asking this Court to stay an action in a state court of South Carolina for the enforcement of a child support order. Granting Debtor's request creates the possibility in the future that former spouses will seek to play one court system off against the other. Debtor has defaulted on numerous occasions in his obligations to Fraser. He has been cited for contempt on several occasions. He clearly filed this case solely as a last resort to thwart the exercise of jurisdiction over him by the South Carolina domestic court. Further, South Carolina has a significantly strong interest in enforcing the terms of the Amended Final Order and is uniquely qualified to settle the dispute. Because the rationale justifying the domestic relations exception to federal jurisdiction exist in this situation, it is appropriate to grant Fraser relief from stay.

## ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the stay pursuant to 11 U.S.C. § 362 be and it hereby

is, modified to the extent necessary to enable Fraser to prosecute the Rule to Show Cause and Supplemental Rule to Show Cause now pending before the Family Court for the Fourteenth Judicial Circuit, Beaufort County, South Carolina, in case number 99-DR-07-1608, styled *Laura Lawton Arnal* (now Fraser), *Plaintiff, vs. David Emil Arnal, Defendant,* to allow the Family Court to issue such orders with respect to such matter as it deems necessary or appropriate, and if applicable to pursue her remedies for any post-petition arrearages due.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 10th day of June, 2003.